

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,537

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare denying his application for medicaid. The Department has moved to dismiss the petitioner's appeal as untimely.

FINDINGS OF FACT

The facts are not in dispute, and are taken from the written arguments filed by the parties (copies of which were furnished to the Board).

On July 12, 1992, the Department mailed the petitioner a notice denying his application for medicaid. On August 25, 1992, an attorney at Vermont Legal Aid (VLA) mailed the following letter to the Assistant Attorney General (A.A.G.) who represents the Department in the petitioner's district:

We have agreed to evaluate this medicaid claim.

First, I want to be certain that there is a fair hearing request on file. The denial is dated 6/12/92. If there is no such request, please consider this as an appeal.

Second, I would like a copy of the DDS medical file. I enclose a signed authorization.

Please call if you any questions.

Following receipt of this letter the A.A.G.'s secretary sent the petitioner's attorney copies of the medical evidence that had been used in making the decision in the petitioner's case. There was no further contact between the parties or any other action in the case until a paralegal at VLA, on December 29, 1993, sent the board the following letter:

Enclosed is a copy of a letter [attorney for petitioner] wrote to [A.A.G.] regarding [petitioner's] request

for a fair hearing to appeal his Medicaid denial. This letter was inadvertently sent to [A.A.G.], but not to the HSB.

Please consider this letter a timely request for a fair hearing. [Petitioner's] position is that he is disabled and, therefore, eligible for Medicaid.

Please contact me if you have any questions.

Prior to its receipt of the above letter the board had heard nothing regarding this appeal.

ORDER

The petitioner's appeal shall be considered timely.

REASONS

Rule No. 1 of the board's Fair Hearing Rules reads as follows:

1. Requests for fair hearings. A hearing may be requested by an applicant or recipient of assistance, benefits or social services, or by a licensee or an applicant for a license, as provided at section 3091 of Title 3.

The agency shall respond to any clear indication (oral or written) that a person wishes to present his case to a higher authority by helping that person to submit a request for hearing in the form provided by this rule or by advising that person to obtain legal representation.

Appeals shall be commenced by mailing a request for fair hearing to the hearing officer for the human services board. A copy of the request shall be mailed to the assistant attorney general representing the agency.

Requests shall include: a) the name and address of the appellant; b) a statement of the basis for the appeal; and c) a statement of what action is expected of the board.

Appeals from decisions by the Department of Social Welfare shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he wished to present his case to a higher authority within 90 days from the date when his grievance arose. All other appeals must be made within 30 days from the date the grievance arose.

(Emphasis in the original.)

The letter the petitioner's attorney sent the A.A.G. in August, 1992, was well within the 90 day limit for appeals, and clearly and unequivocally informed the Department that the petitioner wished to appeal the decision in his case. Under the second paragraph of the above rule (as well being a matter of common sense and courtesy) once the Department receives notice that an individual wishes to appeal, and the Department knows that this appeal had not been filed with the board, it is immediately obligated to either forward that appeal to the board or inform the individual that he must do so. The fact that the request for hearing comes from an attorney does not alter the Department's obligation under the rule. ⁽¹⁾

However appalling the lack of diligence on the part of the petitioner's attorney in this matter, in light of this provision the petitioner's appeal must be considered timely.

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1. It has been the board's observation and experience that the Department studiously and routinely forwards to the board all requests for hearing, even those from attorneys, that it receives--however questionable, equivocal, or duplicative those requests may be. In light of the appearance that the Department's failure to have done so in this case was inadvertent and contrary to its usual practice, its position regarding the timeliness of the petitioner's appeal is somewhat puzzling.